

COMMONWEALTH OF KENTUCKY
BEFORE THE ENERGY REGULATORY COMMISSION

IN THE MATTER OF:

THE APPLICATION OF EAST KENTUCKY)
POWER COOPERATIVE, INC. FOR A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY, AND A CERTIFICATE OF)
ENVIRONMENTAL COMPATIBILITY FOR)
THE CONSTRUCTION OF AN ELECTRIC)
GENERATING STATION AND RELATED)
TRANSMISSION FACILITIES, AND FOR)
AUTHORITY TO ISSUE SECURITIES AND)
EXECUTE NOTES AND OTHER EVIDENCE)
OF INDEBTEDNESS RELATIVE THERETO)

CASE NO. 7809

ORDER

GRANTING A CERTIFICATE OF CONVENIENCE AND NECESSITY AND A
CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND FOR AUTHORITY
TO ISSUE SECURITIES AND EXECUTE NOTES

PROCEDURAL BACKGROUND

On April 1, 1980, East Kentucky Power Cooperative, Inc., (EKP) filed its application with the Energy Regulatory Commission (Commission) for a Certificate of Convenience and Necessity and for a Certificate of Environmental Compatibility and for Authority to Issue Securities and Execute Notes and Other Evidence of Indebtedness to construct a new electric generating station and related transmission lines. The new coal fired generating station, to be known as the J. K. Smith Station, will be located on a 3,120 acre site on the Kentucky River in Clark County and will consist of two 600 megawatt coal fired steam generating units and their appurtenant and related facilities and equipment at a cost of approximately \$1,725,100,000., all as more specifically described in the application and record.

The application includes a request for authority to borrow up to \$1,725,100,000. from the Federal Financing Bank (FFB) for the purpose of constructing the facility. The loan would be guaranteed by the Rural Electrification Administration (REA). Each advance under the loan would bear a maturity date two to seven years after the date of the advance; provided, however, that if EKP desires a long term maturity, it may designate a maturity date of thirty-four years after the end of the calendar year in which the advance is made. EKP's plans are to take full advantage of the thirty-four year maturity date.

The rate of interest payable on each advance would be the respective rate established by FFB at the time of the advance to thirty-four years, the rate of interest effective from and after such extension would be the rate established by FFB at the time of such extension.

Although the application is to borrow the entire amount from FFB, applicant stated that EKP has considered issuing pollution control bonds to finance approximately \$600 million of the construction, and in fact, would do so if that type of financing proved to be available and more economical. A portion of the construction would probably be financed by the issuance of pollution control bonds.

The first hearing was held on May 22, 1980, at 9:00 A.M., Eastern Daylight Time, in the Commission's offices at Frankfort, Kentucky. The applicant filed its prepared testimony and the Commission sustained all motions to intervene thereby making The Division of Consumer Intervention of the Attorney General's office, the Kentucky-American Water Company, the Kentucky Department of Energy, Mr. Will Hodgkin, Mr. Luckie McClintock and Mr. Charles Cook parties to these proceedings. The Commission permitted letters received from Mr. Russell Pierce, President of IUOE Local #181 and Mr. Joe L. McDowell, Business Agent of the Cement Workers Local #896, to be entered into the record and statements by Messrs. Jack Parkey, Ray Burns, Ted Ethington and Paul Parrick, Jr. all representing labor organizations to be entered into the record. Mr. Charles Cook testified.

The Commission ordered filed the report to the Commission required of the Kentucky Department for Natural Resources and Environmental Protection (KRS 278.025(4)) as to the environmental compatibility of the proposed project.

The second hearing was held June 18, 1980, and all parties were allowed to cross examine applicant's witnesses, and the witness appearing on behalf of the Kentucky Department of Energy. The Commission treated the report from the Kentucky Department for Natural Resources and Environmental Protection which had been entered into the record May 22, 1980, as a motion by it to intervene and the motion was sustained. The Commission recessed the hearing and set a third hearing for July 17, 1980, at 9:00 A.M., for the purpose

of cross-examining the intervenor's witnesses and any rebuttal testimony by EKP. The intervenors were ordered to prefile their testimony by July 11, 1980.

At the conclusion of the July hearing it appeared that the evidentiary hearings had been completed.

On October 14, 1980, the Commission issued an Order in which it directed that the record be reopened for the purpose of allowing East Kentucky to file written responses to questions annexed to said Order and to make available for cross-examination witnesses who propounded the prefiled responses to the Order. East Kentucky filed its response to this Order on October 24, 1980.

On November 7, 1980, the Commission issued another Order in which East Kentucky was directed to prefile written responses to the Commission's questions pertaining to the utility's response to the Order of October 14, 1980, and set the matter for a fourth public hearing on December 4, 1980, at 9:00 A.M., Eastern Standard Time, in the Commission's offices at Frankfort, Kentucky for the purposes of verification and cross-examination of prefiled testimony including that annexed to the Commission's Order of November 7, 1980.

The fourth hearing was held as scheduled and all parties were given the opportunity to cross-examine proponents of the prefiled testimony. At the conclusion of fourth hearing the matter stood submitted.

DISCUSSION

EKP, a nonprofit, non-stock Electric Cooperative Corporation, supplies the electric energy requirements of 18 distribution Rural Electric Cooperative Corporations which serve approximately 250,000 accounts (1.5 million people) in 89 Kentucky counties.

The applicant's evidence is that as a result of its 1976 Power Requirements Study which projected deficiencies in its ability to serve its customers electric power needs beginning in 1982, it commissioned an international consultant to make an independent assessment of EKP's in-house projections. The Kansas City based firm of Black and Veatch began its studies in the fall of 1976 and these were ongoing at the time of the evidentiary hearings. The 1976 study was followed by a 1979 Power Requirements Study.

EKP President and General Manager, Donald R. Norris, testified that the failure of the utility to construct the described units could lead to severe dislocations, rotating blackouts and an inability to meet industrial expansion especially in the coal field areas. Norris outlined his prior professional experience which includes utility long-range planning, project feasibility and system adequacy planning studies and stated his concurrence with the recommendations and conclusions of Transmission Division Manager, David Hopper and independent EKP Consultant, Carl Vansant.

EKP through its witness Hopper cited realized projections from its 1976 study as evidence of the credibility and reliability of the in-house utility efforts. For instance, Hopper testified that the 1976 projection for 1979 peak billing demand was 922 MW and that 922 became the actual figure and that the projections for 1977 and 1978 were exceeded. Black and Veatch's in-depth review confirmed the 1976 power projections. The 1976 and 1979 Power Requirements Studies and supplements were made a part of the case record. Historical growth rates in peak demand and energy sales were cited, and oil and gas was alleged to be a factor in predicted increased electric sales because of the alleged undesirability or unavailability of these sources of energy.

The consultant and the Kentucky Department of Energy pointed to the "rather extraordinary" electric use growth rate of EKP and generating utilities in Kentucky when compared to a much more conservative growth rate for the nation. For example, from 1970 to 1977 the demand growth rate of EKP averaged 13% (over 15% for five years) compared with a national average of 7%.

EKP's in-house studies and independent studies by the consultant lead to the conclusion that two 600 MW coal fired units should be constructed to meet the projected needs and that purchase of meaningful amounts of capacity could not be obtained by EKP. The construction of smaller and larger units were considered and rejected. The construction of different

types of units were considered. The record is abundant with such detail and no purpose is served in repeating it.

Kentucky's Energy Department did not appear as a witness for EKP but rather to comment about electric power on a national and state level. However, Dr. Ihara did express general satisfaction with the loads carried by the Commonwealth's utilities when compared with the rest of the country and he cited a number of reasons in support of his concurrence that the Commonwealth's utilities may be "pressured" in their ability to meet demands of the 1980's. He expressed cautious optimism for increased activity and power demands for the coal fields and Eastern Kentucky and concluded by saying ". . . we think that there are some prospects for the Eastern Kentucky Region."

The utility did not rest its case after recounting the historical dates, official population projections and the individual distribution coop need projections following the REA procedures and under the direction of an REA power requirements officer. The utility obviously placed some reliance on the individual judgments of its 18 distribution utilities based on their detailed knowledge of events of specific areas. This reliance was made abundantly clear in EKP's response to the Commission's reopening of the case. Clearly a judgment factor.

All parties may argue that historical data covering a long time period is not an exact barometer for the future. Reasonable persons will no doubt disagree as to the extent to which human activity and endeavors will depart from statistical norms.

Applicant testified that the FFB loan is the best interest rate available and that the loan would be secured by a guarantee from an agency of the United States of America; and that the proposal is the most feasible method of meeting electric needs at the most economical costs.

The Kentucky Department of Natural Resources and Environmental Protection began its extensive environmental review of the project in 1977. It is clearly a most comprehensive review. Its report to this Commission is

gratuitous to the extent that the Department has taken the time to pinpoint details of concern and probable solutions outside the "stipulation" it requested in the report's conclusion. While the record does not support any prehearing stipulations by applicant and the Department, Mr. Herman Regan, consultant company president and a witness for EKP and former head of the Department Bureau which included responsibilities for air, water and solid waste concurred as to the reasonableness of those conditions set forth under the heading "conclusion" in the Department's report.

The primary concern of the Department is in maintaining a minimum 236 cubic feet flow per second of water in the Kentucky River at the point EKP will withdraw water for the proposed new power plant.

Kentucky-American Water Company disagrees with applicant and the Department for Natural Resources and Environmental Protection and proposes a more restrictive plan of water withdrawals to protect its (Kentucky-American) customer projected load growth.

The utility will construct a reservoir to minimize this potential problem. The reservoir construction became part of EKP's application during the evidentiary hearings. The evidence details the site selection process which lead to the conclusion that the proposed site is the most suitable one from the standpoints of engineering/economic feasibility and environmental/societal compatibility and traditional siting tests. Mr. Regan testified that if properly operated, constructed and maintained then there should be no significant adverse environmental impacts in the areas of air, water, land or noise from the plant or transmission facilities.

A number of witnesses testified as to the economic benefits of the proposed construction.

FINDINGS OF FACT

(1) That there is a need and necessity for applicant to construct the two 600 MW units, appurtenances thereto and related transmission facilities as described in the application and evidence. The proposed construction will reasonably assure that the needs of its customers for electricity will be met in the foreseeable future in the most economical manner. The proposed construction will reasonably eliminate a deficiency in generating capacity. A certificate of Convenience and Necessity should be issued.

(2) That Applicant's proposed method of financing said construction appears to be the most feasible and reasonable method and the least expensive including its plan to seek to issue pollution control bonds for as much of the financing as is possible at an even lower interest rate.

(3) That Applicant's proposal will not be in violation of any of the regulations of the Department for Natural Resources and Environmental Protection, but the Department's additional requested requirements set forth under "conclusions" in its report to this Commission should be required of Applicant. The Department's requested conditions as to water withdrawal from the Kentucky River is also reasonably calculated to protect the customers of Kentucky-American Water Company.

(4) The community needs, the need for continued industrial development of the service area, the projected customer requirements and the favorable economics of the facility balanced against the relatively minimal adverse environmental factors, and coupled with the conditions herein described clearly demonstrate that the benefits of construction far outweigh any potential negative impact to the environment and that a Certificate of Environmental Compatibility should be issued.

(5) That coal fired generation in Kentucky is absent the risk of failure that is inherent in nuclear generation projects in other states. That Kentucky's future includes reliance by the nation on a proven and predictable source of energy - coal.

(6) That EKP and all utilities must continually update need data projections and initiate whatever plans are necessary to protect and serve its customers.

ORDER

IT IS THEREFORE ORDERED:

(1) That EKP be and it is hereby granted a Certificate of Convenience and Necessity to proceed with the construction of the J. K. Smith Station and related facilities and transmission lines as more specifically described in the application and record.

(2) That EKP be and it is hereby granted a Certificate of Environmental Compatibility.

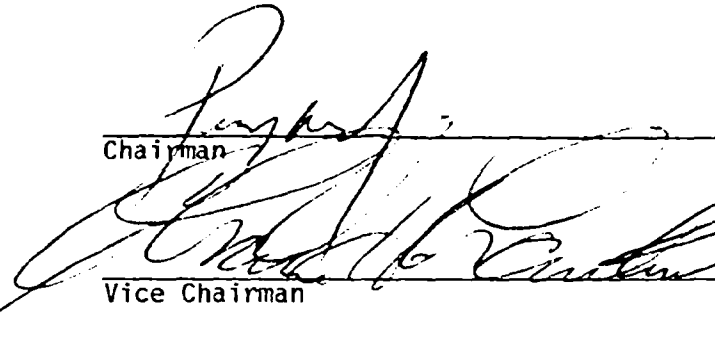
(3) That EKP shall comply with those recommendations of the Department for Natural Resources and Environmental Protection set forth under the heading "conclusion" in the Department's report to this Commission and more fully described in the evidence.

(4) That EKP be and it is hereby granted authority to issue securities and execute notes and other evidence of indebtedness as described in the evidence for financing the construction of the J. K. Smith facility and related facilities and transmission facilities. That EKP continue in its efforts to seek to issue pollution control bonds to the maximum extent possible and at a lower interest rate than its related financing.

(5) That EKP continue to monitor its generation needs and promptly initiate and implement any substantiated need to revise schedules or plans necessary to meet its obligations to protect and serve its consumers.

Done at Frankfort, Kentucky, this 19th day of December, 1980.

ENERGY REGULATORY COMMISSION


Chairman


Vice Chairman

Commissioner
(Not Participating)

ATTEST:

Secretary